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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~993~~ 122

THE IVANHOE IRRIGATION DISTRICT,
Plaintiff,

vs.

ALL PARTIES AND PERSONS, etc.,
Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY McCRACKEN,
Defendant and Appellee.

Request for Leave to File as Amicus Curiae Memorandum Supporting Motion to Dismiss Appeal

and

Memorandum Supporting Motion to Dismiss Appeal

On Appeal from the Supreme Court of the State of California

EDSON ABEL
Middletown, California
Attorney for California Farm Bureau Federation

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 993

THE IVANHOE IRRIGATION DISTRICT,
Plaintiff,

vs.

ALL PARTIES AND PERSONS, etc.,
Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY McCRACKEN,
Defendant and Appellee.

Request for Leave to File as Amicus Curiae Memorandum Supporting Motion to Dismiss Appeal

EDSON ABEL, as attorney for the California Farm Bureau Federation, requests leave to file a memorandum *amicus curiae* supporting the motion to dismiss the appeal in the above entitled matter. As grounds for such request, applicant represents:

1. The California Farm Bureau Federation is a nonprofit membership corporation organized and existing under the laws of the State of California and composed of over 60,000 farmers actively engaged in agricultural pursuits within the State of California, many of whom are directly

and vitally interested in the outcome of this proceeding and the final determination of the issues therein.

2. One of the primary purposes for which said California Farm Bureau Federation was organized and is maintained is the advancement of the economic interests of its members and all farmers in California generally. The issues of the above proceeding have a direct bearing on those economic interests, a bearing somewhat more general in character and more related to future agricultural prospects in California than is true with respect to the parties to the proceeding themselves.
3. Consents of the counsel for appellants and appellee follow this request and are hereby made a part hereof.

WHEREFORE, applicant requests that he be given leave to file a memorandum supporting the motion to dismiss the appeal in the above matter as *amicus curiae* on behalf of the California Farm Bureau Federation. The proposed memorandum is included herein immediately following this request.

Respectfully submitted,

EDSON ABEL

Attorney for California Farm Bureau Federation

June 10, 1957.

In the Supreme Court of the United States
October Term, 1956
No.

The Ivanhoe Irrigation District
Plaintiff and Appellant,

vs.

All Parties and Persons, etc.,
Defendants,

The State of California
Defendant and Appellant,

Courtney McCracken
Defendant and Appellee.

CONSENT TO FILING OF AN AMICUS CURIAE BRIEF IN OPPOSITION TO JURISDICTIONAL STATEMENT ON APPEAL

The State of California and the Ivanhoe Irrigation District, the appellants herein, hereby consent to the filing of an amicus curiae brief by Edson Abel. Such brief is to be filed in opposition to the appellants' Jurisdictional Statement on appeal and is to be served on appellants on or before June 12, 1957. Such brief may be either on behalf of the California Farm Bureau Federation alone or on behalf of the California Farm Bureau Federation and the American Farm Bureau Federation.

Dated: San Francisco, California, May 13, 1957.

EDMUND G. BROWN, *Attorney General of the State of California*
B. ABBOTT GOLDBERG, *Deputy Attorney General*
ADOLPHUS MOSKOVITZ, *Deputy Attorney General*
By Sgd. B. ABBOTT GOLDBERG
B. Abbott Goldberg
Attorneys for Appellants

In the Supreme Court of the United States

October Term, 1956

No.

The Ivanhoe Irrigation District
Plaintiff and Appellant,

vs.

All Parties and Persons, etc.,
Defendants,

The State of California
Defendant and Appellant,

Courtney McCracken
Defendant and Appellee.

CONSENT TO FILING OF AN AMICUS CURIAE BRIEF IN OPPOSITION TO JURISDICTIONAL STATEMENT ON APPEAL

Courtney McCracken, appellee herein, hereby consents to the filing of an amicus curiae brief by Edson Abel. Such brief is to be filed in opposition to the appellants' Jurisdictional Statement on appeal and is to be served on appellants on or before June 12, 1957. Such brief is to be filed on behalf of the California Farm Bureau Federation.

Dated: San Francisco, California,
May 20, 1957

COURTNEY MCCRACKEN

By Sgd. HARRY HORTON
Harry W. Horton
Attorney for Appellee

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 993

THE IVANHOE IRRIGATION DISTRICT,
Plaintiff,

vs.

ALL PARTIES AND PERSONS, etc.,
Defendants,

THE STATE OF CALIFORNIA,
Defendant and Appellant,

COURTNEY MCCRACKEN,
Defendant and Appellee.

Memorandum Supporting Motion to Dismiss Appeal

POSITION OF AMICUS CURIAE

This memorandum supports the motion of appellee to dismiss the appeal in the instant case on the grounds that the judgment appealed from rests on adequate non-federal grounds and that the appeal does not present a substantial federal question.

Brief

STATEMENT OF THE CASE

The facts here stated will for the most part only supplement those appearing elsewhere and will be repetitious only to the extent necessary to set forth such supplemental facts in their proper perspective.

This case arose under an *in rem* proceeding authorized under California law and is a required validation proceeding under a contract between the United States and the Ivanhoe Irrigation District. Under this contract the United States agreed to build an irrigation water distribution system for the District and to deliver to such distribution system a supply of irrigation water from the Central Valley Project of California.

The United States obtained the water supply for the Central Valley Project by appropriations in its own right under California law for the use and benefit of the Central Valley Project, by assignments of rights under applications made by the Director of Finance of the State of California for the use and benefit of the Central Valley Project and the landowners to be served from the Project, by acquisition of riparian, appropriative and prescriptive water rights in the San Joaquin River once held by Miller & Lux, Inc., and others, and finally by assignment to it of appropriative rights held by the Madera Irrigation District. All of the water rights so acquired were founded in the water laws of the State of California and were the voluntary acquisitions of the United States.

The contract in issue here would require the appellant District to limit its deliveries of water to appellee McCracken to 160 acres and leave him without such service as to the remainder of his 309 acres, notwithstanding each of the 149 acres discriminated against had paid and under California Irrigation District law was obligated for the future to pay equally with each favored acre for the water rights and other District services related to irrigation water distribution.

Appellee opposed confirmation of the contract between the United States and the Ivanhoe Irrigation District on various statutory and constitutional grounds but particu-

larly on the ground that the 160-acre limitation in the contract is not applicable and is invalid as to him and his property within the district as violative of his rights under the protective provisions of the California Constitution.

THE BASES OF THE DECISION OF THE CALIFORNIA SUPREME COURT

The California Supreme Court in its own language bases its decision as follows (app. 63-4):*

"In accordance with the foregoing it is concluded:

(1) That the plaintiff is an irrigation district duly organized, existing and operating as such under the laws of this state.

(2) That the title to the unappropriated domestic waters of the state is in the State of California in trust for the water users of the state as beneficiaries and such waters are subject to appropriation under the laws of the state.

(3) That the United States as assignee of appropriative rights, as original appropriator thereof, and in the acquisition of other rights for the same purpose stands in the same relation to such beneficial owners as does the state, namely, as trustee for such beneficial owners and is answerable for the faithful performance of that trust.

(4) That in distributing the water contracted to be delivered to the District, the United States does so as a purveyor of water at a price for the benefit of the water users of the District.

(5) That in so delivering the water to the District it is not competent for the United States or the District, either or both, to discriminate against the present or potential water users in the District on the basis of the amount of land owned by them, and that the 160-acre limitation contained in the original Recla-

*For convenience of the Court, "app" refers to appellants' appendices to its Jurisdictional Statement.

mation Act is inapplicable to the subject matter of the contract and improperly contained therein.

(6) That insofar as the contract provides for the construction of works for the storage and distribution of water to and by the District, the relationship of the parties is that of contractor and contractee. Upon the completion of the construction work the District is obligated under the law to pay for the same within 40 years in equal annual installments. Upon the completion of such payments the District is entitled to ownership of the works and property of the storage and distribution system free from any claims of the United States.

(7) That insofar as the contract provides for furnishing water to the District at a price the United States in acting as a purveyor of domestic waters of the state to the District, under federal law, is bound to observe and comply with the laws of the state with reference to the rights which are vested in the water users being served or entitled to be served. In this respect neither the state nor any of its agencies may contract or otherwise provide that the distribution of water to those for whose benefit the right to the water was acquired may be arbitrarily discontinued.

The judgment is affirmed."

A careful analysis of these conclusions and their supporting discussions demonstrates beyond the peradventure of a doubt that they rest solely upon the Constitution, statutes and decisional law of the State of California. The California Supreme Court adhered strictly to the question of the statutory and constitutional powers of the Ivanhoe Irrigation District to contract with anybody, including the United States, to the extent attempted in the contract proposed for validation. The question did not involve any powers, authorities or attributes of the United States; it

was solely a question of the power of the appellant District under California law to contract in the manner and to the extent proposed in its agreement with the United States.

Just prior to setting forth the foregoing conclusions of law upon which it rested its decision, the California Supreme Court expressly discarded all other issues offered for its consideration in the following language (app. 62):

> "The trial court in its findings of fact and conclusions of law declared the contract to be invalid on numerous additional grounds not carried into the judgment. Conclusions that the contract is uncertain, lacks mutuality, improperly delegates powers to the Secretary of the Interior, improperly prevents changes in the boundaries of the district, provides unreasonable security measures to the United States and other conclusions not necessary to the judgment are insufficiently supported when considered in connection with the views herein expressed as to the terms under which the parties may properly contract."

In other words, the Supreme Court explicitly limited the bases of its decision to the conclusions which it specifically set forth in its decision (app. 63-4) and, as has been commented on, explicitly discarded all other possible grounds for its decision (app. 62).

ARGUMENT

On the basis of the California Supreme Court's own conclusions of law, it is apparent that that court found it unnecessary to, and did not, go beyond California constitutional and decisional law in reaching the judgment it did. For that reason, the following rule of *Herb v. Pitcairn*, 324 U.S. 117, 125-6 (1945), applies:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent

> state grounds * * *. The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our jurisdiction. Our only power over state judgments is to correct them to the extent that they inaccurately adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we correct its views of federal laws, our review could amount to nothing more than an advisory opinion."

So also the pronouncement of Mr. Chief Justice Stone in *Flournoy v. Wiener*, 321 U.S. 253, 262, to the effect:

> "* * * we have repeatedly held that where the judgment of a state court rests in part on a non-federal ground adequate to support it, this Court will not consider the correctness of the decision which the state court also made of a federal question otherwise reviewable here."

The foregoing decisions establish a rule which is not difficult of application in the absence of confusion, purposeful or otherwise.

With such brief consideration, this memorandum adopts the affirmative presentation of the appellees on the issue and turns its attention to the attempt of the Jurisdictional Statement (hereinafter referred to as Statement) to establish some legitimate federal question.

THE STATEMENT FAILS FACTUALLY TO DISCLOSE JURISDICTION

In an effort to fashion the required jurisdictional base, appellants stretch beyond its elastic limits the meaning of the language of the California Supreme Court's decision. Notwithstanding that Court's repeated declarations that it

was concerned only with the validity of the contract which is the subject of the proceeding, appellants have consistently and continuously gone far afield in an effort to bring the decision within the realm of federal jurisdiction by consistently, continuously and erroneously treating the decision as based on federal law.

Illustrative of this effort is the averment in the Statement, page 6, that "the California Supreme Court has held * * * that certain federal statutes are unconstitutional." One would have a right to expect some specifications to support such a broad and unqualified assertion but the Statement contains none and diligent search of the decision has failed to reveal any language genuinely capable of such an interpretation. It is true that the California court discussed various federal statutes but such consideration was purely incidental to their relation to the contracting powers of the appellant Ivanhoe District under California law, and did not in any instance go so far as to even intimate unconstitutionality.

After this delusive and unsupported assumption, the Statement then jumps right over to a postulation of a whole series of questions, every one undeniably federal in character but infected with the same basic delusion. These questions all presuppose that the California court made some determination on matters referred to in them, when the Court at the most merely gave them passing mention. It did not have to decide any of the questions and carefully avoided even the appearance of doing so. As stated above, the California Court adhered strictly to the question before it which was whether the appellant Ivanhoe District could under California law enter into the contract with the United States offered for judicial consideration.

Then on page 18 of the Statement, a corollary and equally erroneous allegation is made that the appeal in the instant

case presents the federal questions previously postulated in the apparent hope that repetition would supply a verity otherwise lacking.

At this same point, it is again erroneously assumed:

> "* * * where the federal questions were actually considered and decided by the highest court of the state, references to whether, how and when they were raised in the trial court are not necessary for the purpose of establishing the jurisdiction of the United States Supreme Court * * *."

With this clever avoidance of what otherwise would have been an embarrassing problem, the Statement continues its labor in an effort to give substance to the illusion that the California court declared certain federal statutes unconstitutional when all that court ever did was to find the provisions of the contract before it to be beyond the lawful powers with which the District had been endowed. It would seem that in view of the California court's explicitness in this respect, there would be little excuse for appellants to so mislead themselves.

As previously indicated on page 9, *supra*, if federal questions were raised in the trial court, the California Supreme Court brushed aside consideration of them as unnecessary to its decision.

On page 19 of the Statement, under "A", it is said:

> "The majority of the California Supreme Court concluded that the 160-acre water limitation provisions in all contracts are invalid. The provisions are required by the plain words of federal law * * * and are properly includible under state law * * *."

The implication is that the California Supreme Court interpreted the federal Omnibus Adjustment Act of 1926. This the Court did not do. It did say that *if* the language

of the Omnibus Adjustment Act was to be interpreted as requiring the 160-acre limitation in the instant contract, the Omnibus Act ceased to be an "applicable" federal law by reason of objections resting in the constitution and statutes of California. So far as the provisions referred to as being "properly includible under state law" are concerned, the question should be settled by the final judgment of California's highest court that they were not.

On page 21, the Statement includes an implication that the California Supreme Court used its own interpretations of the Omnibus Adjustment Act and Section 8 of the Reclamation Act of 1902 to reach certain of its conclusions. Reference to the language of the decision (app. 50-51), shows clearly that this is a misinterpretation of what the California court actually said. It merely held that the theories of appellants would be sound only *if* the United States was "the owner absolute of the domestic waters of the state with the right to the use thereof freed from trust relationship on behalf the real owners thereof, namely, the water users in the district." On the contrary, the court held that "the title to the water to be purveyed is not an unlimited title in the United States." This, of course, is the conclusion reached strictly on the basis of California water law and is not related in any way to the federal statutes appellants would like to intrude into the consideration.

On page 22 of the Statement appears:

> "The majority of the Court also held invalid *as a matter of federal law* the article found in each district's contract providing that title to all of the project works * * *." (Italics supplied.)

The only trouble with this allegation is that there is nothing in the decision either to support or even suggest it. It is to be noted that there is no attempt to indicate the

particular point in the decision where this is supposed to have occurred. The decision shows very clearly that federal law had nothing to do with the holding. It was pure California law.

On page 23 appears another very apparent misconstruction of the Court's decision. It is said:

> "Finally, the majority concluded that the provisions of the contracts with the United States relating to delivery and payment for a water supply are illegal * * *."

The Court held that the provisions referred to were beyond the power of the District to accept, which obviously is vastly different from the interpretation used in the Statement. Here again, appellants claim the objectionable provisions are authorized by California law but the California Supreme Court said they were not.

It is submitted that the Statement fails completely to disclose any substantial federal ground for the jurisdiction of this Court but on the contrary the very specifications in the Statement, when appraised factually, demonstrate the fidelity with which the California Supreme Court kept constantly before it the only question for its decision and that was, had the Ivanhoe Irrigation District, an agency of the State of California, been endowed by the statutes and the constitution of California with the powers necessary to permit it to enter into the contract before the California Supreme Court for consideration.

THE DECISION APPEALED FROM RESTS ON CONSTITUTIONAL AND DECISIONAL GROUNDS OF LONG STANDING

The Statement implies that something new has been added to California decisional water law to achieve an invalidation of the 160-acre limitation. Nothing could be farther from the fact. As appears from the California Supreme

Court's decision, in this case the present legal attributes of the domestic waters of California originated many years ago.

Merchants National Bank v. Escondido Irrigation District (1904), 144 Cal. 329 (77 P. 937);

Tulare Irrigation District v. Collins (1908), 154 Cal. 440 (97 P. 1124).

There has never been any substantial question of the trustee status occupied by a water distribution agency in California with respect to its water supply. It was the law in 1935 when the United States first became interested in the Central Valley Project and it was the law when the United States, of its own free will and accord, acquired without objection as to their limitations the water rights for the Central Valley Project which it now seeks to divest of their trust character.

CONCLUSION

The judgment below in this case rests on an adequate non-federal basis; no substantial federal question is presented. The appeal should be dismissed, and a writ of certiorari denied.

Respectfully submitted,

EDSON ABEL
Attorney for California Farm Bureau Federation